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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/262,597	03/04/1999	HOWARD M. KINGSTON	119994-5	9647

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EXAMINER

DELACROIX MUIRHEI, CYBILLE

ART UNIT PAPER NUMBER

1614

DATE MAILED: 07/16/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/262,597

Applicant(s)

KINGSTON, HOWARD M.

Examiner

Cybill Delacroix-Muirheid

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 20-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Continued Prosecution Application

1. The request filed on March 28, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/262,597 is acceptable and a CPA has been established. An action on the CPA follows.

The restriction requirement mailed July 3, 2001 is maintained.

Applicant's response received Jul. 16, 2001 electing Group I, claims 1-19, without traverse is acknowledged.

Claims 20-42 are withdrawn from consideration.

Claim Objections

2. Claims 2, 4, 6, 8, 11, 12, 15, 17 are objected to because of the following informalities: in claim 2, the "said" should be deleted. In claim 4, line 2, the "said" before "vessel" should be deleted. In claim 6, line 1, "as said vessel" should be deleted. In claim 8, lines 5 and 6, the "said" should be deleted. In claim 11, line 2, "as said" and the second occurrence of "energy" should be deleted. In claim 12, line 1, "said" should be deleted. In claim 15, line 1, --of-- should be added before "claim 14". Finally, claim 17 and claim 14 are duplicate claims since they are worded identically. Said claims are identical in scope. Appropriate correction is required.

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haswell 5,215,715 in view of Kingston et al. (Reference AA in the IDS received May 10, 1999).

Haswell et al. disclose the following: a continuous method for digesting and subsequent analysis of materials such as foods, biological tissues, wastes and environmental samples, inorganic materials, sediments or pigments, wherein said materials are dispersed in an acid digesting medium containing nitric acid and sulfuric acid and subjected to microwave radiation. The dispersion is passed through a Teflon tubing contained in an enclosed microwave heating apparatus. As the dispersion passes through the tubing it is heated by the action of the microwaves. Then the heated dispersion is passed through a cooler to condense formed gas

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bubbles. The resulting product, after further processing, is then analyzed. Haswell et al. further state that temperature and pressure controls are needed to control the digestion process. Kindly refer to col. 1, lines 31-41; col. 4, lines 11-13; col. 5, lines 58-65; col. 6, lines 8-30; col. 7, lines 61-66; col. 9, lines 52-54.

Haswell et al. do not specifically disclose the microwave energy used in the digestion process nor does Haswell specifically disclose that the process is performed in a closed vessel or unitary chamber. Yet the Examiner refers to Kingston et al. which teach a method for acid decomposition of samples wherein a closed vessel microwave digestive system is used. Kingston et al. teach digestion methods employing biological samples, nitric acid and sulfuric acid and microwave energy at a frequency of 2450 MHZ. Please see the abstract; page 2535, last full paragraph before "EXPERIMENTAL SECTION; finally the "Experimental Section" itself.

It would have been obvious to one of ordinary skill in the art to modify the method of Haswell to include the closed reaction vessel and microwave frequency because Haswell discloses that closed vessels enable higher temperatures to be reached while lowering the blank by reducing the amount of acid required and isolating the sample from the atmosphere (please see page 2540, second column, third full paragraph). Such a modification would have been motivated by the reasoned expectation of successfully digesting and analyzing the samples in the method of Haswell.

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With respect to the claims 8, 10, which concern the design of the vessel to include two compartments, "choice in aesthetic design was held to be obvious. Kindly refer to In re Seid, 73 USPQ 431.

Conclusion

Claims 1-19 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cybille Delacroix-Muirheid whose telephone number is (703) 306-3227. The examiner can normally be reached on Tue-Fri from 8:30 to 6:00. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

CDM



July 12, 2002


Cybille Delacroix-Muirheid
Patent Examiner Group 1600